

or without good cause, or where the holder knew or should have known that the substances were to be used for unauthorized consumption or distribution. The respondent's guilty plea on May 13, 2005 was followed by a Judgment of Conviction issued August 12, 2005, which sentenced respondent to five years probation and included as a condition that respondent surrender his license to practice medicine in the State of New Jersey, with the specific provision that he was "forever barred from the practice of medicine in this State."

The Complaint further alleged that subsequent to ~~the conviction respondent refused to sign a Consent Order~~ which provided for the permanent surrender of his license to practice medicine in the State of New Jersey. Instead, respondent claimed, through his attorney, that the mere submission of a letter from respondent's counsel surrendering his license and reserving the right to reapply after a period of five years is sufficient to satisfy the terms of the criminal conviction. Hence, the Complaint also alleged respondent's conduct in refusing to abide by the Judgment of Conviction constitutes misrepresentation and deception, professional misconduct, failure to comply with rules of the Board in violation of N.J.S.A. 45:1-21(b), (e) and (h), and failure of respondent to maintain

the ongoing requirement of good moral character, in violation of N.J.S.A. 45:9-6.

Finally, Count Two of the Complaint alleged that on respondent's biennial license renewal dated May 5, 2005 he answered "no" to the question inquiring whether he had been arrested, charged or convicted when in fact he had been subject to criminal charges during the relevant time period. It also alleged he violated N.J.A.C. 13:35 6-19(c) by failing to notify the Board within 21 days of changes, additions or deletions to the information he provided on his biennial license renewal form.

~~This matter is currently before the Board on the~~

Attorney General's Motion for Summary Decision filed on April 24, 2007, by Kathy Stroh Mendoza, DAG, Kevin R. Jespersen appearing on the motion. Respondent has been represented for the entirety of this matter by Robert J. Conroy, Esq.

The Attorney General filed the following in support of the motion:

1. Administrative Complaint, filed on December 1, 2006;
2. Letter Brief in Support of Motion for Summary Decision dated April 19, 2007;
3. Certification of Kathy Stroh Mendoza, DAG, dated April 19, 2007 including the following attachments:

- a. Exhibit A: Indictment State of New Jersey v. Eugene Pirog, M.D., Superior Court of New Jersey, Law Division Criminal. Docket 04-11-00202 dated November 10, 2004.
- b. Exhibit B: Transcript of Plea dated May 13, 2005.
- c. Exhibit C: Adult Pre-sentence Report dated August 4, 2005.
- d. Exhibit D: Transcript of Sentence dated August 12, 2005.
- e. Exhibit E: Judgment of Conviction dated August 12, 2005, Plea Form and supplemental Plea forms (3).
- ~~f. Exhibit F: Eugene Pirog, M.D., License No. MA016569 July 1, 2005 - June 30, 2007 Medical Board. Check for \$125.00 dated May 5, 2006. 2003 - 2006 CDS renewal. Check for \$20 dated September 5, 2003. CDS renewal dated September 10, 2005.~~
- g. Exhibit G: Letter from Robert J. Conroy, Esq., counsel for Dr. Pirog, dated August 12, 2005 surrendering license.
- h. Exhibit H: Cost Application.

Oral argument on the motion was held on May 9, 2007.¹ The parties were noticed of the proceeding by way of

¹ At the outset of the hearing respondent made two (2) motions. The first was to remove respondent's criminal pre-sentencing report from the record. In support of the

an April 27, 2007 letter from Executive Director William Roeder. On the date of and at the time of the hearing, respondent through his counsel filed a May 8, 2007 Certification with the following Attachments;

A - An August 12, 2005 letter from respondent's counsel Robert J. Conroy to William V. Roeder, Executive Director of the Board whereby counsel informs the Board of the respondent's conviction and asserts "The doctor is surrendering his license effective the close of business today and stipulates that he will not re-apply (if at all) for a period of at least five years."

motion counsel entered into evidence as R-1, R-3:21-2 the Rules governing criminal practice pre-sentence procedure. The second motion was that the Attorney General should withdraw from representation and the Board obtain separate counsel due to an alleged conflict of interest. Respondent argued that the Attorney General is in contempt of court by asserting that the pre-sentencing report is properly before the Board, is not a privileged document and in fact is "highly relevant and probative." The Board denied the motion to remove the Attorney General. However, the Board determined to seal the pre-sentencing report from further dissemination, but reserved the right to use the document to the extent necessary for this proceeding. In reaching this determination the Board relied on R-3:21-2 and case law which provides the report is subject to discovery by a third party having a legitimate trial need for disclosure of its contents State v. Blue, 124 N.J. Super. 276 (App. Div. 1973) and on State v. Loftin, 146 N.J. 295 (1996) under which a pre-sentence report may be used by the State in the penalty phase to impeach defense witnesses and in some instances could be used in cross-examination.

B - Respondent's entry on the New Jersey Division of Consumer Affairs Physician Profile website dated May 8, 2007 listing respondent as actively licensed.

C - A copy of respondent's May 8, 2007 letter to his counsel confirming a May 8, 2007 conversation with Mr. Conroy regarding the May 9, 2007 hearing in Trenton in which respondent states he was just notified by his attorney of the hearing date, has no intention of re-applying for licensure, thought he surrendered his license one and a half years ago, and that he cannot attend the hearing due to illness.

~~The Attorney General commenced argument by~~

maintaining that because of the simple and undisputed nature of the facts of the matter, it is amenable to resolution by motion for summary decision and that an evidentiary hearing is neither warranted by the facts, nor required by law. Deputy Attorney General Kevin Jesperson asserted that the facts of this case cannot be disputed. Respondent was convicted by way of a guilty plea of distributing controlled dangerous substances in violation of N.J.S.A. 2C:35-5(5). The conviction is a violation of N.J.S.A. 45:1-21 (f) and (m). Furthermore, as part of respondent's criminal sentence the Superior Court required respondent to surrender his license to practice medicine in

New Jersey and be "forever barred from the practice of medicine in this State." He was also sentenced to five years of probation and to perform 100 hours of community service, fines and penalties and suspension of his driving privileges for six (6) months. The Attorney General asserted these facts cannot be disputed and urged the Board to enter summary decision.

The DAG also argued respondent's conviction constitutes grounds for disciplinary action by the State Board of Medical Examiners pursuant to N.J.S.A. 45:1-21(f) in that he has been convicted of a crime or offense ~~involving moral turpitude or relating adversely to the~~ activity regulated by the Board and pursuant to N.J.S.A.

45:1-21(m), in that respondent had prescribed or dispensed controlled dangerous substances indiscriminately or without good cause, or where the applicant or holder knew or should have known that the substances were to be used for unauthorized consumption or distribution. Respondent's underlying conduct involved his dispensing of over 14,000 dosage units of CDS in a seven month period to two individuals. The Attorney General maintained that respondent violated the Hippocratic Oath "to do no harm" by providing the means for his patients to become drug dependent via illegal distribution of a controlled

dangerous substance, a third degree offense. Furthermore, but for his license, respondent could not have engaged in this criminal conduct.

He further argued that respondent cannot dispute that when asked in the context of his May 5, 2005 biennial renewal application whether or not he was subject to any criminal charges, he said "no", even though at the time he filled out that application an indictment had been issued against him by a Grand Jury in New Jersey accusing him of, among other things, conspiracy to unlawfully possess and distribute Percocet. The biennial renewal and the indictment conclusively establish the fact of his misrepresentation.

Respondent filed a May 2, 2007 letter memorandum in lieu of a more formal brief in opposition to the Motion for Summary Decision in which he admitted respondent was convicted yet asserted that respondent's August 12, 2005 offer through counsel to surrender his license with the right to re-apply in five years is adequately protective of the public.² He continued by asserting the doctor is

² Respondent filed an Answer to the Complaint in which he denied the fact of the conviction. Respondent also filed on May 8, 2007, the day before the hearing, a Notice in Lieu of Subpoena to produce William Roeder at the hearing. However on the day of the hearing respondent did not pursue that issue.

retired and categorized the Deputy's filing of a complaint "utterly ridiculous" and cautioned the Board to "exercise some oversight" over deputies. On the date of hearing - one and a half years after first offered the opportunity to resolve the matter - he indicated his willingness to now accept a Consent Order with a surrender of license with prejudice to re-application.³ Respondent's oral argument on the motion focused on the concept that the Attorney General should not have filed the Complaint or Motion and should have accepted counsel's representation via letter that respondent surrendered and could reapply. He also placed ~~much emphasis on an internally inconsistent phrase in the~~ transcript of the criminal sentencing in which the Judge stated

"the defendant is sentenced to a term of probation of five years with the following conditions. He is to surrender his license to practice medicine and he is forever barred from the practice of medicine in this State during the time of his probation obviously." [Emphasis added].

He urged the Board to interpret this phrase to mean that the respondent may reapply after five (5) years. However

³ The Board President, Sindy Paul, M.D. when first presented with respondent's belated offer one (1) week before the hearing, did not accept the settlement and the full Board ratified her decision prior to commencing its May 9, 2007 hearing.

we find this rationale flies in the face of the plain language of the Judgment of Conviction, the formal document embodying the conviction, which in unambiguous language specifically states respondent is to be "forever barred from the practice of medicine in this State."

We have carefully considered the record before us and have concluded that the matter in its entirety is amenable to resolution by summary decision. Just as summary judgments afford parties in court a speedy and efficient means of resolving matters where a search of the records present no genuine issue of material fact, administrative ~~agencies in the conduct of quasi judicial proceedings are~~
to be guided by analogous principles.

Under N.J.A.C. 1:1-12.5 summary decision is appropriate if "the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." In order to defeat the motion respondent must submit competent evidential material that raises a factual issue. We find the Attorney General has satisfied the burden of proof as to both counts of the Complaint and that "the evidence is so one-sided that one party must prevail as a matter of law." Brill v. Guardian

Life Insurance Company, 142 N.J. 520, 540 (1995). We find there are no facts in dispute in this matter requiring an evidentiary hearing. Respondent's Judgment of Conviction is abundantly clear in requiring respondent's surrender of license to be permanent and that respondent indeed has been convicted of a crime relating adversely to the activity regulated by the Board. We also find that the letter of respondent's counsel merely notifying the Board he is surrendered and reserving the right to reapply is not sufficient. We further find that it is indisputable that on May 5, 2005 when respondent answered "No" on his ~~biennial renewal that in fact he was subject to criminal~~ charges as he had been indicted on November 10, 2004.⁴

Further, he had a responsibility to notify the Board of changes to the information provided on his biennial renewal application. Therefore there is no genuine issue of material fact regarding Count I or II of the Complaint.

After ruling on the Motion respondent was given an opportunity to provide information in mitigation of penalty. Counsel argued that the doctor is 76 years old, not practicing, subject to criminal probation and caring

⁴ The charges were ultimately resolved with respondent's plea of guilty on May 13, 2005 and the Judgment of Conviction entered August 12, 2005.

for a sick wife. He also claimed there are serious Eighth Amendment issues as well as issues regarding cruel and unusual punishment and whether or not the Board is barred from punishing the doctor, in light of the fact that he has already been dealt with by the criminal justice system.

We find the Board has distinct independent authority to discipline respondent based on the criminal conviction of a crime that relates adversely to the activity regulated by the Board in violation of N.J.S.A. 45:1-21(f). Additionally in this matter the Board is also appropriately memorializing a component of the penalty ~~already ordered by the Court in the context of the criminal~~

conviction, a permanent bar to licensure. Additionally, respondent's misrepresentation in the context of his biennial renewal provides further grounds for discipline. We, therefore based on the findings herein, are not merely memorializing the licensure surrender ordered by the criminal court but are revoking respondent's license as he did not surrender appropriately.

We further find that respondent's continuing refusal through his counsel to concede that the surrender of licensure in New Jersey was made permanent via the Judgment of Conviction, and through counsel, his repeated refusal to enter into a Consent Order and instead assert

that respondent reserves the right to reapply in five (5) years, has resulted in the State being put to the task of filing a Complaint and prosecuting this matter. Furthermore, respondent filed an Answer denying the fact of the conviction and caused the State to bring this Motion for Summary Decision. The costs to the State to bring these actions should not be borne by the regulated community. It is respondent's actions that occasioned these costs. We find respondent's counsel's unilateral letter of August 12, 2002 which merely informs the Board's executive director "the doctor is surrendering his license effective the close of business today and stipulates that

he will not re-apply (if at all) for a period of at least five years" is not acceptable. It is not in compliance with respondent's oath in the context of his plea whereby he agreed to permanently surrender. A mere unilateral letter of surrender is not disciplinary action and its terms are not memorialized in a filed Consent Order. We find relying on the Attorney General's Affidavit of Costs and Cost Application that sufficient documentation has been presented such that we impose investigative costs on respondent to be paid to the State, of \$14,123.92 and attorney fees of \$14,150. In leveling these costs we note that respondent's counsel did not object to the costs nor

submit any challenge at all to the application. The Board in its discretion did not impose civil penalties based on the mitigating information in respondent's handwritten letter, that he is aged, not currently practicing and caring for ill family members.

ACCORDINGLY, IT IS on this 13TH day of AUGUST 2007,

ORDERED that:

1. The Attorney General's motion for Summary Decision as to Counts I and II of the Complaint filed against respondent is hereby granted.

2. The license of the respondent to practice ~~medicine in the State of New Jersey shall be and hereby is~~ revoked effective immediately upon oral announcement on the record May 9, 2007. Consistent with the Judgment of Conviction of August 12, 2005, respondent is ordered to be forever barred from the practice of medicine in New Jersey.

3. Respondent is hereby assessed the costs to the State in this matter in the amount of \$14,123.92. The costs shall be submitted by certified check or money order made payable to the State of New Jersey and submitted to the Board of Medical Examiners at 140 E. Front Street, P. O. Box 183, Trenton, New Jersey 08625 within ten (10) days of the filing of this Order.

4. Respondent is hereby assessed attorney fees in the amount of \$14,150.00. The attorney fees shall be submitted by certified check or money order made payable to the State of New Jersey and submitted to the Board of Medical Examiners, 140 E. Front Street, P. O. Box 183, Trenton, New Jersey 08625 within ten (10) days of the filing of this Order.

5. In the event the costs and attorney fees are not timely satisfied, a Certificate of Debt shall be filed by the State.

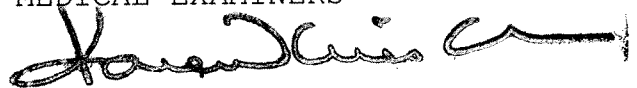
6. Respondent shall abide by the Directives

Applicable to any Medical Board licensee who is disciplined

or whose surrender of licensure has been accepted.

(Attached hereto and made a part hereof.)

NEW JERSEY STATE BOARD OF
MEDICAL EXAMINERS



By

Karen Criss, R.N., C.N.M.
Vice President

**DIRECTIVES APPLICABLE TO ANY MEDICAL BOARD LICENSEE
WHO IS DISCIPLINED OR WHOSE SURRENDER OF LICENSURE
HAS BEEN ACCEPTED**

APPROVED BY THE BOARD ON MAY 10, 2000

All licensees who are the subject of a disciplinary order of the Board are required to provide the information required on the addendum to these directives. The information provided will be maintained separately and will not be part of the public document filed with the Board. Failure to provide the information required may result in further disciplinary action for failing to cooperate with the Board, as required by N.J.A.C. 13:45C-1 et seq. Paragraphs 1 through 4 below shall apply when a license is suspended or revoked or permanently surrendered, with or without prejudice. Paragraph 5 applies to licensees who are the subject of an order which, while permitting continued practice, contains a probation or monitoring requirement.

1. Document Return and Agency Notification

The licensee shall promptly forward to the Board office at Post Office Box 183, 140 East Front Street, 2nd floor, Trenton, New Jersey 08625-0183, the original license, current biennial registration and, if applicable, the original CDS registration. In addition, if the licensee holds a Drug Enforcement Agency (DEA) registration, he or she shall promptly advise the DEA of the licensure action. ~~(With respect to suspensions of a finite term, at the conclusion of the term, the licensee may contact the Board office for the return of the documents previously surrendered to the Board. In addition, at the conclusion of the term, the licensee should contact the DEA to advise of the resumption of practice and to ascertain the impact of that change upon his/her DEA registration.)~~

2. Practice Cessation

The licensee shall cease and desist from engaging in the practice of medicine in this State. This prohibition not only bars a licensee from rendering professional services, but also from providing an opinion as to professional practice or its application, or representing him/herself as being eligible to practice. (Although the licensee need not affirmatively advise patients or others of the revocation, suspension or surrender, the licensee must truthfully disclose his/her licensure status in response to inquiry.) The disciplined licensee is also prohibited from occupying, sharing or using office space in which another licensee provides health care services. The disciplined licensee may contract for, accept payment from another licensee for or rent at fair market value office premises and/or equipment. In no case may the disciplined licensee authorize, allow or condone the use of his/her provider number by any health care practice or any other licensee or health care provider. (In situations where the licensee has been suspended for less than one year, the licensee may accept payment from another professional who is using his/her office during the period that the licensee is suspended, for the payment of salaries for office staff employed at the time of the Board action.)

A licensee whose license has been revoked, suspended for one (1) year or more or permanently surrendered must remove signs and take affirmative action to stop advertisements by which his/her eligibility to practice is represented. The licensee must also take steps to remove his/her name from professional listings, telephone directories, professional stationery, or billings. If the licensee's name is utilized in a group practice title, it shall be deleted. Prescription pads bearing the licensee's name shall be destroyed. A destruction report form obtained from the Office of Drug Control (973-504-6558) must be filed. If no other licensee is providing services at the location, all medications must be removed and returned to the manufacturer, if possible, destroyed or safeguarded. (In situations where a license has been suspended for less than one year, prescription pads and medications need not be destroyed but must be secured in a locked place for safekeeping.)

3. Practice Income Prohibitions/Divestiture of Equity Interest in Professional Service Corporations and Limited Liability Companies

A licensee shall not charge, receive or share in any fee for professional services rendered by him/herself or others while barred from engaging in the professional practice. The licensee may be compensated for the reasonable value of services lawfully rendered and disbursements incurred on a patient's behalf prior to the effective date of the Board action.

A licensee who is a shareholder in a professional service corporation organized to engage in the professional practice, whose license is revoked, surrendered or suspended for a term of one (1) year or more shall be deemed to be disqualified from the practice within the meaning of the Professional Service Corporation Act. (N.J.S.A. 14A:17-11). A disqualified licensee shall divest him/herself of all financial interest in the professional service corporation pursuant to N.J.S.A. 14A:17-13(c). A licensee who is a member of a limited liability company organized pursuant to N.J.S.A. 42:1-44, shall divest him/herself of all financial interest. Such divestiture shall occur within 90 days following the the entry of the Order rendering the licensee disqualified to participate in the applicable form of ownership. Upon divestiture, a licensee shall forward to the Board a copy of documentation forwarded to the Secretary of State, Commercial Reporting Division, demonstrating that the interest has been terminated. If the licensee is the sole shareholder in a professional service corporation, the corporation must be dissolved within 90 days of the licensee's disqualification.

4. Medical Records

If, as a result of the Board's action, a practice is closed or transferred to another location, the licensee shall ensure that during the three (3) month period following the effective date of the disciplinary order, a message will be delivered to patients calling the former office premises, advising where records may be obtained. The message should inform patients of the names and telephone numbers of the licensee (or his/her attorney) assuming custody of the records. The same information shall also be disseminated by means of a notice to be published at least once per month for three (3) months in a newspaper of

general circulation in the geographic vicinity in which the practice was conducted. At the end of the three month period, the licensee shall file with the Board the name and telephone number of the contact person who will have access to medical records of former patients. Any change in that individual or his/her telephone number shall be promptly reported to the Board. When a patient or his/her representative requests a copy of his/her medical record or asks that record be forwarded to another health care provider, the licensee shall promptly provide the record without charge to the patient.

5. Probation/Monitoring Conditions

With respect to any licensee who is the subject of any Order imposing a probation or monitoring requirement or a stay of an active suspension, in whole or in part, which is conditioned upon compliance with a probation or monitoring requirement, the licensee shall fully cooperate with the Board and its designated representatives, including the Enforcement Bureau of the Division of Consumer Affairs, in ongoing monitoring of the licensee's status and practice. Such monitoring shall be at the expense of the disciplined practitioner.

(a) Monitoring of practice conditions may include, but is not limited to, inspection of the professional premises and equipment, and inspection and copying of patient records (confidentiality of patient identity shall be protected by the Board) to verify compliance with the Board Order and accepted standards of practice.

(b) Monitoring of status conditions for an impaired practitioner may include, but is not limited to, practitioner cooperation in providing releases permitting unrestricted access to records and other information to the extent permitted by law from any treatment facility, other treating practitioner, support group or other individual/facility involved in the education, treatment, monitoring or oversight of the practitioner, or maintained by a rehabilitation program for impaired practitioners. If bodily substance monitoring has been ordered, the practitioner shall fully cooperate by responding to a demand for breath, blood, urine or other sample in a timely manner and providing the designated sample.

EUGENE P. PIROG, M.D.

NJ License # MA016569

ADDENDUM

Any licensee who is the subject of an order of the Board suspending, revoking or otherwise conditioning the license, shall provide the following information at the time that the order is signed, if it is entered by consent, or immediately after service of a fully executed order entered after a hearing. The information required here is necessary for the Board to fulfill its reporting obligations:

Social Security Number¹: _____

List the Name and Address of any and all Health Care Facilities with which you are affiliated:

~~List the Names and Address of any and all Health Maintenance Organizations with which you are affiliated:~~

Provide the names and addresses of every person with whom you are associated in your professional practice: (You may attach a blank sheet of stationery bearing this information).

¹ Pursuant to 45 CFR Subtitle A Section 61.7 and 45 CFR Subtitle A Section 60.8, the Board is required to obtain your Social Security Number and/or federal taxpayer identification number in order to discharge its responsibility to report adverse actions to the National Practitioner Data Bank and the HIP Data Bank.

**NOTICE OF REPORTING PRACTICES OF BOARD
REGARDING DISCIPLINARY ACTIONS**

Pursuant to N.J.S.A. 52:14B-3(3), all orders of the New Jersey State Board of Medical Examiners are available for public inspection. Should any inquiry be made concerning the status of a licensee, the inquirer will be informed of the existence of the order and a copy will be provided if requested. All evidentiary hearings, proceedings on motions or other applications which are conducted as public hearings and the record, including the transcript and documents marked in evidence, are available for public inspection, upon request.

Pursuant to 45 CFR Subtitle A 60.8, the Board is obligated to report to the National Practitioners Data Bank any action relating to a physician which is based on reasons relating to professional competence or professional conduct:

- (1) Which revokes or suspends (or otherwise restricts) a license,
- (2) Which censures, reprimands or places on probation,
- (3) Under which a license is surrendered.

Pursuant to 45 CFR Section 61.7, the Board is obligated to report to the Healthcare Integrity and Protection (HIP) Data Bank, any formal or official actions, such as revocation or suspension of a license (and the length of any such suspension), reprimand, censure or probation or any other loss of license or the right to apply for, or renew, a license of the provider, supplier, or practitioner, whether by operation of law, voluntary surrender, non-renewability, or otherwise, or any other negative action or finding by such Federal or State agency that is publicly available information.

~~Pursuant to N.J.S.A. 45:9-19.13, if the Board refuses to issue, suspends, revokes or otherwise places conditions on a license or permit, it is obligated to notify each licensed health care facility and health maintenance organization with which a licensee is affiliated and every other board licensee in this state with whom he or she is directly associated in private medical practice.~~

In accordance with an agreement with the Federation of State Medical Boards of the United States, a list of all disciplinary orders are provided to that organization on a monthly basis.

Within the month following entry of an order, a summary of the order will appear on the public agenda for the next monthly Board meeting and is forwarded to those members of the public requesting a copy. In addition, the same summary will appear in the minutes of that Board meeting, which are also made available to those requesting a copy.

Within the month following entry of an order, a summary of the order will appear in a Monthly Disciplinary Action Listing which is made available to those members of the public requesting a copy.

On a periodic basis the Board disseminates to its licensees a newsletter which includes a brief description of all of the orders entered by the Board.

From time to time, the Press Office of the Division of Consumer Affairs may issue releases including the summaries of the content of public orders.

Nothing herein is intended in any way to limit the Board, the Division or the Attorney General from disclosing any public document.